

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WILLIAM F. CROWELL)	WT Docket No. 08-20
)	
Application to Renew License for Amateur)	FCC File No. 0002928684
Radio Service Station W6WBJ)	
)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S MOTION TO DISMISS THE RENEWAL APPLICATION
FOR FAILURE TO PROSECUTE AND TO TERMINATE THE PROCEEDING**

1. In light of the unequivocal and willful statements made by William F. Crowell (Crowell) that he will not appear at the hearing in Washington, D.C., the Chief, Enforcement Bureau (Bureau), through her attorneys, respectfully requests, for the reasons set forth below, that the Presiding Judge dismiss Crowell's pending application to renew Amateur Radio Service Station W6WBJ with prejudice for failure to prosecute and terminate the hearing proceeding.

Background

2. On February 12, 2008, the Wireless Telecommunications Bureau commenced a hearing proceeding to determine whether the above-captioned application filed by Crowell for renewal of his license for Amateur Radio Service Station W6WBJ should be granted.¹ Pursuant to Sections 4(i) and 309(e) of the Communications Act of 1934, as amended (Act)² and Section

¹ See *In re William F. Crowell*, Hearing Designation Order, WT Docket No. 08-20, DA 08-361 (rel. Feb. 12, 2008) (HDO).

² See 47 U.S.C. §§ 154(i) and 309(e).

1.254 of the Commission's rules (Rules),³ the HDO specified that Crowell shall have the burden of proof with respect to all of the issues specified therein.⁴

3. The HDO also ordered that the hearing shall take place at a time and place to be specified in a subsequent order.⁵ On February 15, 2008, then-Presiding Judge Arthur I. Steinberg ordered that "all hearing proceedings [in the above-captioned proceeding] shall take place in the Offices of the Commission, Washington, D.C."⁶ Crowell did not appeal Judge Steinberg's *Order*. Instead, ten days *after* Judge Steinberg ordered that the hearing would take place in Washington, D.C., Crowell filed a written notice of appearance, as directed by the HDO, stating: "I will indeed appear on the date fixed for hearing herein, and . . . I will present evidence on the issues specified in the Hearing Designation Order."⁷

4. On March 30, 2017, Crowell filed a motion for a field hearing, asserting that he did not have the financial means to travel to Washington, D.C.⁸ The Bureau opposed Crowell's motion, arguing that the Commission's policy in scheduling local (field) hearings is founded upon public interest considerations which Crowell had failed to identify and that Crowell's allegation that he had insufficient means to travel to Washington, D.C. was unsubstantiated.⁹ The Presiding Judge denied Crowell's motion, noting that the HDO had delegated to the Presiding Judge the authority to set the place of the hearing and that Judge Steinberg had already

³ See 47 CFR § 1.254.

⁴ See HDO at para. 14.

⁵ See *id.* at para. 10.

⁶ *Order*, FCC 08M-08 (ALJ, rel. Feb. 15, 2008).

⁷ See Applicant's Written Appearance [47 U.S.C. § 154(i) & 47 C.F.R., Part I, Subpart A, § 1.221 (c)] (mailed on Feb. 20, 2008) (Crowell's Notice of Appearance), attached hereto as Exhibit A. Pursuant to Section 1.7 of the Rules, Crowell's Notice of Appearance was considered filed on February 25, 2008, the date it was received by the Commission. See 47 CFR § 1.7.

⁸ See Licensee's Motion for a Field Hearing [Title 47 CFR, Chapter I, Subchapter A, Part I, Subpart B, Sec. 1.253] (filed Mar. 30, 2017).

⁹ See Enforcement Bureau's Opposition to Crowell's Motion For a Field Hearing (filed Apr. 3, 2017).

directed that the hearing take place in Washington, D.C.¹⁰ Accordingly, the Presiding Judge concluded that “there will be no field hearing and that all proceedings must be held **in Washington, D.C.**”¹¹

Crowell Confirms He Will Not Appear at the Hearing

5. On May 31, 2018, the Presiding Judge directed the parties to submit status reports addressing, in relevant part, readiness for hearing and proposed dates for the hearing to commence at the Commission in Washington, D.C.¹² When counsel for the Bureau proposed to Crowell that the hearing commence on October 16, 2018, and requested that he confirm whether that worked for him, Crowell responded: “Not in Washington, D.C., it doesn’t.”¹³ In additional correspondence, Crowell informed counsel for the Bureau that “**I won’t be appearing at any Washington, D.C. hearings.**”¹⁴ He further stated: “**I am going to decline to travel to Washington, D.C. . . . for the hearing**”¹⁵ and “**if you want to try to force a hearing in Washington, which I will decline to attend,** and run the risk of appeal and remand, then go right ahead.”¹⁶

6. On June 7, 2018, Crowell filed a status report in which he confirmed to the

¹⁰ See *Order*, FCC 17M-19 (ALJ, rel. Apr. 7, 2017). The Presiding Judge also recognized that the Bureau had made “a strong showing of the public interests served by holding the hearing in Washington, D.C.” *Id.* at n.7.

¹¹ *Id.* at 2 (emphasis added). Although Crowell appealed *Order*, FCC 17M-19, his appeal challenges the Presiding Judge’s authority to consider Crowell’s financial ability – which does not appear to be a basis upon which the Presiding Judge ruled against Crowell’s request for a field hearing. See Licensee’s Exceptions to ALJ’s Memoranda, Opinions and Orders dated April 7, 2017 (FCC 17M-18 & 17M-19) (filed Apr. 10, 2017) at 3-4. The Presiding Judge has not yet ruled on Crowell’s appeal.

¹² See *Status Order*, FCC 18M-03 (ALJ, rel. May 31, 2018).

¹³ Email from Crowell to Pamela Kane, dated June 4, 2018, 12:01PM EST. Crowell’s emails to Bureau staff are attached hereto as Exhibit B.

¹⁴ Email from Crowell to Pamela Kane, dated June 4, 2018, 12:12PM EST (emphasis added).

¹⁵ Email from Crowell to Pamela Kane, dated June 4, 2018, 10:00AM EST (emphasis added).

¹⁶ *Id.* (emphasis added).

Presiding Judge that he will not be appearing at the hearing.¹⁷ Specifically, Crowell stated: **“I decline to appear at a hearing in Washington, D.C.”**¹⁸ arguing, without any legal support or citation, that the Commission is required to give him a field hearing¹⁹ and that Washington, D.C. is an “illegal and improper” venue.²⁰ He further confirmed: **“[I]f you want to proceed to a hearing in Washington, D.C. in my absence (. . . I will not be appearing there).”**²¹

Crowell’s Refusal to Appear at the Hearing Warrants Dismissal of his Application with Prejudice

7. Pursuant to Section 1.221(c) of the Rules, when an application has been designated for hearing, if the applicant fails to file a written appearance stating that he will appear on the date fixed for the hearing and present evidence on the issues specified in the hearing designation order, that application “will be dismissed with prejudice for failure to prosecute.”²² The purpose of Section 1.221(c) is self-evident – if the applicant, as the entity with the burden of proof, does not commit to appearing at the hearing and presenting evidence on the designated issues, there is no need for a hearing. Indeed, there is no reason for the Bureau, the Office of the Administrative Law Judge, and/or the Commission to expend valuable time and resources adjudicating the merits of an application that the applicant has waived its right to prosecute. Accordingly, the application will be dismissed with prejudice.

8. As discussed above, knowing that the hearing was to take place in Washington, D.C., Crowell originally filed a written notice of appearance in which he stated: “I will indeed

¹⁷ See Applicant’s Status Report (filed June 7, 2018) (Crowell’s Status Report) at 1, 17.

¹⁸ *Id.* at 1 (emphasis added).

¹⁹ See *id.* at 1.

²⁰ *Id.* at 17, para. 12.

²¹ *Id.* at 14 (emphasis added).

²² 47 CFR § 1.221(c). See also HDO at paras. 11, 12.

appear on the date fixed for hearing herein, and . . . I will present evidence on the issues specified in the Hearing Designation Order.”²³ Nevertheless, Crowell has now made it clear to the Bureau and to the Presiding Judge that he will not comply with the terms to which he committed in that Notice. On more than one occasion, he has unmistakably confirmed that he will not appear at the hearing to be scheduled in Washington, D.C. or present evidence on the designated issues at that hearing.²⁴

9. Crowell’s decision not to appear at the hearing has the same practical effect as if he had initially failed, pursuant to Section 1.221(c) of the Rules, to file a written notice of appearance or otherwise signal his intent to participate in the hearing on his pending renewal application – *i.e.*, he has waived his right to prosecute that application.²⁵ The consequences of Crowell’s decision should likewise be no different.²⁶ Accordingly, the Bureau respectfully requests that the Presiding Judge dismiss Crowell’s renewal application for Amateur Radio Service Station W6WBJ with prejudice for failure to prosecute and terminate the hearing proceeding.

²³ Crowell’s Notice of Appearance.

²⁴ See *supra* at 3-4. As the Presiding Judge is well-aware, Crowell is an attorney and thus cannot claim ignorance as to the legal implications of refusing to appear at the hearing. See, e.g., *Memorandum Opinion and Order*, FCC 10M-04 (ALJ, rel. Jul. 29, 2010) at n.11 (“Mr. Crowell is an attorney, and is presumed to understand Commission rules and his responsibility as an officer of the court.”); Applicant’s Status Report at 17, para. 13 (Crowell stating, “I am an attorney”); Crowell’s Notice of Appearance (filed on the letterhead of “William F. Crowell Attorney at Law”).

²⁵ See, e.g., *Action, S.A. v. Marc Rich & Co., Inc.*, 951 F.2d 504, 507-08 (2d Cir. 2008) (affirming that defendant who had initially entered an appearance, but then admitted “he would not appear, either for discovery or for trial” had defaulted on his right to prosecute his case).

²⁶ See 47 CFR § 1.221(c); see also *Metro Two-Way LLC*, WTB Docket No. 18-133, *Order*, 18M-04 (ALJ, rel. June 11, 2018) (dismissing pending application with prejudice after applicant failed to signal intent to participate); *Acumen Communications*, WTB Docket No. 17-17, *Order*, FCC 17M-20 (ALJ, rel. Apr. 10, 2017) (same).

Respectfully submitted,

Rosemary C. Harold
Chief, Enforcement Bureau



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Special Counsel
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW, Room 4-C330
Washington, D.C. 20554
(202) 418-1420

Michael Engel
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Washington, D.C. 20554
(202) 418-7330

June 12, 2018

EXHIBIT A

William F. Crowell

Attorney at Law

ORIGINAL COPY FILED

Received & Inspected

February 20, 2008

FEB 25 2008

FCC Mail Room

Office of Administrative Law Judges
Federal Communications Commission
Attention: Mary L. Gosse, Administrative Officer
445 - 12th Street S.W.
Washington, D.C. 20554

FILED/ACCEP

FEB 25 2008

Federal Communications Commission
Office of the Secretary

Re: Application of William F. Crowell to renew Amateur Service license
W6WBJ

FCC ALJ Case No. 08M-08; WT Docket No. 08-20; FCC file no.
0002928684

Dear Ms. Gosse:

I am the Applicant-licensee in the above-entitled case.

Enclosed you will please find the original and six (6) copies of my Notice of Appearance therein, with proof of service by mail. Please file it.

Thank you for your anticipated cooperation.

Yours very truly,



WILLIAM F. CROWELL

WFC:wfc

encls.

cc: Rebecca A. Hirselj, Ass't. Chief, Investigations & Hearings Div., Enforcement
Bureau, Federal Communications Commisison, 445 12th Street, S.W., Room
4-A236 Washington, D.C. 20554

1110 Pleasant Valley Rd., Diamond Springs, Calif. 95619

(530) 295-0350; fax: (530) 295-0352

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FEB 25 2008

FCC Mail Room

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 08M-08

In the Matter of)	WT Docket No. 08-20
)	
WILLIAM F. CROWELL)	FCC File No. 0002928684
)	
Application to Renew License for Amateur)	
Radio Service Station W6WBJ)	


APPLICANT'S WRITTEN APPEARANCE
[47 U.S.C. §154(i) & 47 C.F.R., Part I, Subpart A, §1.221(c)]

I, WILLIAM F. CROWELL, Applicant herein, hereby certify:

That my address is: 1110 Pleasant Valley Road, Diamond Springs, California 95619-9221; my telephone number is (530) 295-0350; and my fax number is: (530) 295-0352.

That I will indeed appear on the date fixed for hearing herein, and that I will present evidence on the issues specified in the Hearing Designation Order.

I declare under penalty of perjury that the foregoing is true and correct, and that this Appearance is executed on February 20, 2008 at Diamond Springs, El Dorado County, California.



William F. Crowell
Applicant

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 08M-08

In the Matter of)	WT Docket No. 08-20
)	
WILLIAM F. CROWELL)	FCC File No. 0002928684
)	
Application to Renew License for Amateur Radio)	
Service Station W6WBJ)	

PROOF OF SERVICE BY MAIL
[47 C.F.R. Part 1, Subpart A, §1.47]

I am a citizen of the United States and a resident of El Dorado County, California. I am the Applicant herein. I am over the age of 18 years. My address is: 1110 Pleasant Valley Road, Diamond Springs, California 95619-9221.

On February 20, 2008 I served the foregoing Notice of Appearance on all interested parties herein by placing true copies thereof, each enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box at Diamond Springs, California, addressed as follows:

Office of Administrative Law Judges, Federal Communications Commission
ATTENTION: Mary L. Gosse, Administrative Officer
445-12th Street, SW, Washington, DC 20554 (*original and 6 copies*)

Kris Monteith, Chief, Enforcement Bureau, Federal Communications Commission
445 12th Street, SW, Room 7-C723, Washington, D.C. 20554

Rebecca A. Hirselj, Ass't. Chief, Investigations & Hearings Division, Enforcement Bureau
F.C.C., 445 12th Street, S.W., Room 4-A236, Washington, D.C. 20554 (Bureau Counsel)

I further declare that, on this same date, I also faxed copies of said document to the parties above-named at the fax numbers they provided to me. Last, I declare that I also emailed copies of said document in MicroSoft Word format to said parties at the email addresses they provided to me.

I declare under penalty of perjury that the foregoing is true and correct, and that this proof of service was executed on February 20, 2008 at Diamond Springs, California.

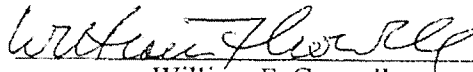

William F. Crowell

EXHIBIT B

Pamela Kane

From: William Crowell <retroguybilly@gmail.com>
Sent: Monday, June 4, 2018 10:00 AM
To: Pamela Kane
Subject: Re: W6WBJ non-renewal in the amateur radio service; WT 08-20

"We will be in touch early next week..."

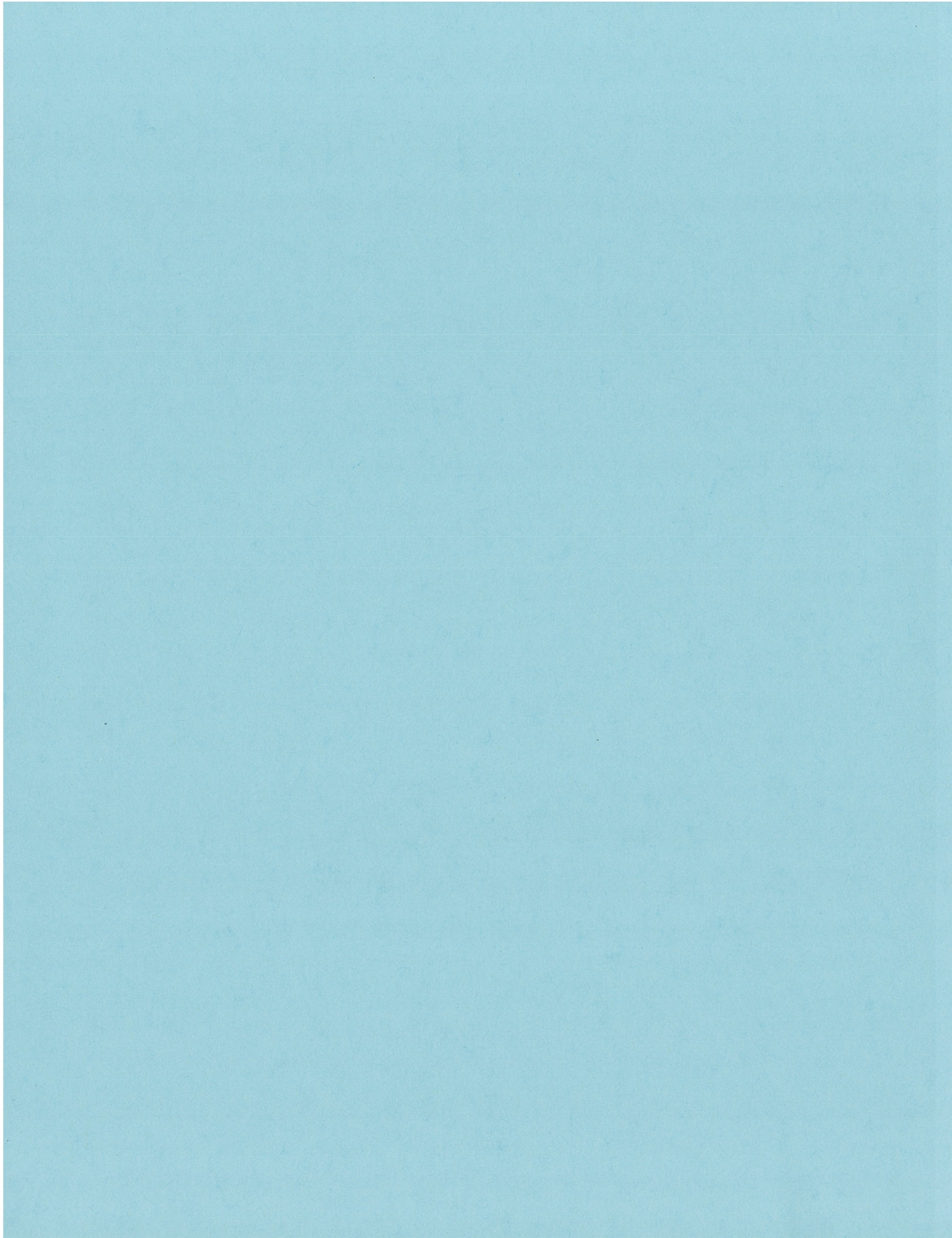
Yes, it would be nice to talk to you about the case, and the issues that Judge Sippel wants us to address in our status reports. I wasn't sure if you meant to communicate by email or by telephone, but I think email would be highly preferable since my telephone service is rather poor. The audio drops out a lot because I live pretty far out in the country.

FYI, I am going to decline to travel to Washington, D.C. for either conferences or for the hearing, and in the event that the hearing is held in absentia, I intend to appeal on that ground. I want the hearing to be held in the same Sacramento federal building where Judy Lancaster took my deposition in 2010.

Perhaps you are familiar with the Commission's case law concerning the "rebuttable presumption of licensee solvency", and therefore realize Judge Sippel made a big mistake by applying the in forma pauperis rationale to my attendance in Washington. The in forma pauperis doctrine has nothing to do with it. He should have applied the rebuttable presumption of solvency instead, and had he done so, he would have seen that the presumption doesn't even apply to the amateur radio service in the first place. Also, please note that the four leading amateur cases on the subject [WA6JIY (Kerr), N6BHU (Hildebrand), WA6CGI (Armstrong) and WB6MMJ (Ballinger); citations will be provided if you need them] the former PRB realized it was required under the "rebuttable presumption" to hold field hearings in the city nearest the licensee's residence. The only two amateur cases that were heard in Washington [N6NHG (Mitnick) and KB7ILD (Titus)] are irrelevant because both applicants were represented by attorney George Lyon, who has his principal office in Washington and thus wanted the hearing held there. So if you want to try to force a hearing in Washington, which I will decline to attend, and run the risk of appeal and remand, then go right ahead. OTOH, if you agree that it is inappropriate to require me to travel to Washington to renew a non-remunerative license, let me know. Maybe we can convince Judge Sippel to change his mind.

I will look forward to talking to you soon.

Sincerely,
Bill Crowell, W6WBJ



Pamela Kane

From: William Crowell <retroguybilly@gmail.com>
Sent: Monday, June 4, 2018 12:01 PM
To: Pamela Kane
Subject: Re: W6WBJ non-renewal in the amateur radio service; WT 08-20

Not in Washington, D.C., it doesn't, Ms. Kane.

Please see my earlier email.

May I please add two matters that I forgot in my that email?

First, please recall that both Judge Steinberg and Judge Sippel had previously found good cause to exist for allowing me to appear by speakerphone. Then suddenly in the Spring of 2017 Judge Sippel overruled his previous order in this regard. I would argue that there was no legal basis for his changed order. There was no change in circumstances, so the previous order was still appropriate. Or maybe I should say that the only change in circumstances was that in the interim I filed my petition to disqualify the ALJ. I do not think the Commission would like this procedure, nor do I think the D.C. Circuit would approve of it on a Sec. 402 appeal.

Also, a fellow ham operator and friend of mine keeps asking me to inquire of you whether you are related to the former Engineer In Charge in San Francisco, Phil Kane, N6SP. I knew Mr. Kane, too. He was a very nice man.

I'm looking forward to hearing back from you concerning my earlier email and this one. Thank you.

Bill Crowell, W6WBJ

On Mon, Jun 4, 2018 at 8:43 AM, Pamela Kane <Pamela.Kane@fcc.gov> wrote:

Mr. Crowell: The Enforcement Bureau proposes that the hearing commence on October 16, 2018. Please confirm whether this works for you.

Pamela S. Kane

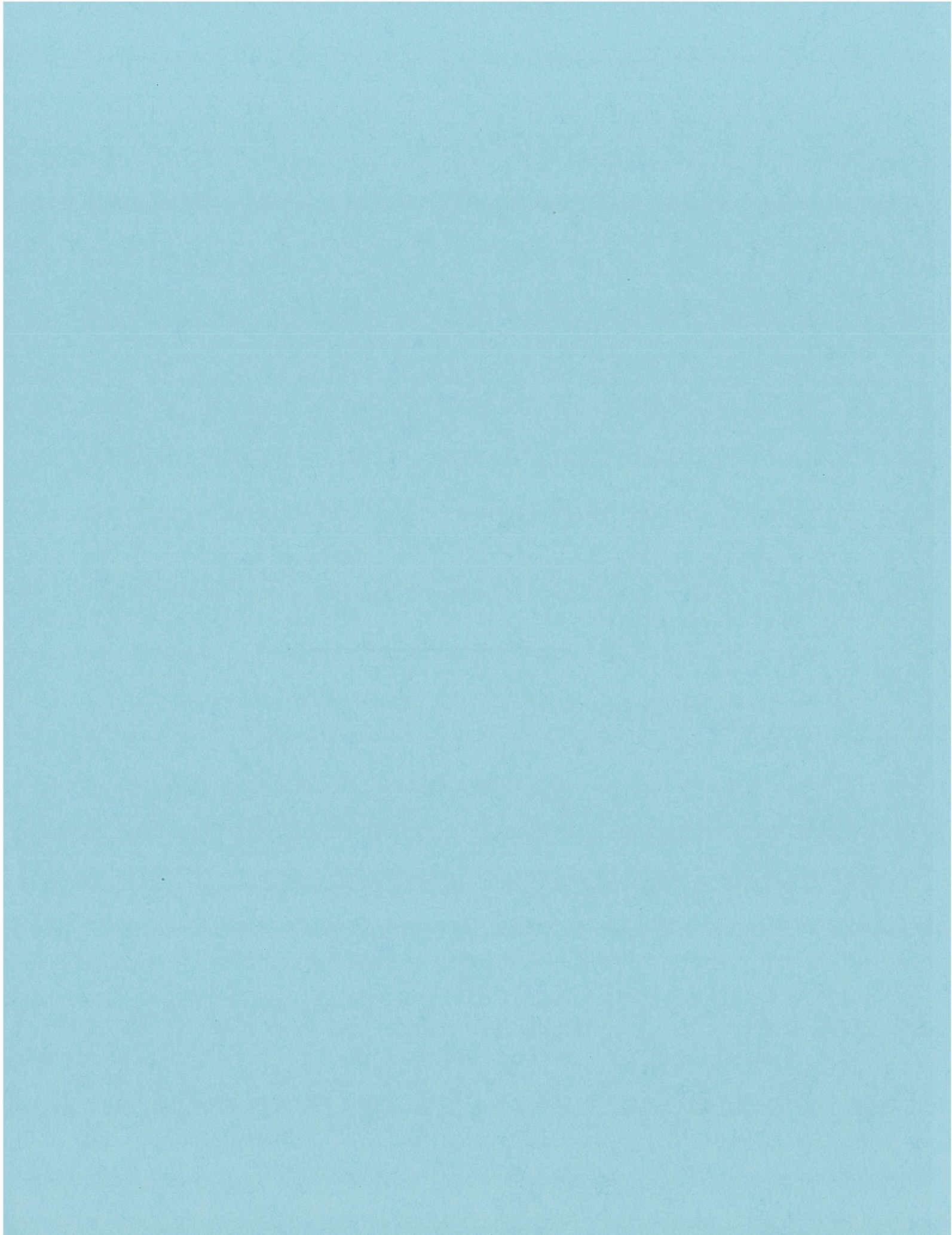
Special Counsel -- Investigations & Hearings Division

Enforcement Bureau

Federal Communications Commission

445 12th Street, S.W.

Washington, D.C. 20554



Pamela Kane

From: William Crowell <retroguybilly@gmail.com>
Sent: Monday, June 4, 2018 12:12 PM
To: Pamela Kane
Subject: Re: W6WBJ non-renewal in the amateur radio service; WT 08-20

I do want to either file a separate status report, or a joint one, even though I won't be appearing at any Washington, D.C. hearings. I really think we should file a joint status report that states our differences. Also, I would like to know whether you think discovery is completed and if so, when you think it closed. And if you have new evidence on which you intend to rely, I would like to be advised of that, and of what it consists.

If we were good lawyers, I should think we would be able to completely resolve this case in some creative fashion that is both equitable and protects the public interest.

Thanks again.

CERTIFICATE OF SERVICE

Pamela S. Kane certifies that she has on this 12th day of June, 2018, sent copies of the foregoing
“ENFORCEMENT BUREAU’S MOTION TO DISMISS THE RENEWAL APPLICATION
FOR FAILURE TO PROSECUTE AND TO TERMINATE THE PROCEEDING” via email to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

Rachel Wickenheiser
Office of the Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

William F. Crowell
1110 Pleasant Valley Road
Diamond Springs, CA 95619
retroguybilly@gmail.com

A handwritten signature in black ink, appearing to read "Pamela S. Kane", is written over a horizontal line.

Pamela S. Kane